S.B. Civil Revision Petition No.527/2006

Ram Chandra.
vs.
LRs. of Beni Ram.

Date : 12.1.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr. BR Mehta, for the petitioner.

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Heard learned counsel for the petitioner.

The petitioner is aggrieved against the order dated 3.8.2006 by which the trial court dismissed the petitioner's application filed under Section 83 of the Transfer of Property Act.

According to the petitioner, the petitioner filed suit for eviction of the defendant/non-petitioners on the basis of relationship of landlord and tenant wherein the defendant took a plea that the defendant is in possession as mortgagee. The mortgage deed is registered one. In the said eviction suit, two courts below namely, trial court and first appellate court held that the defendant is in possession as mortgagee. The present petitioner in that case preferred second appeal which is said to be pending before this Court.

In view of the defence taken by the defendant

mortgagee, the petitioner/plaintiff submitted an application under Section 83 of the Transfer of Property Act before the trial court and submitted that he is ready to pay the mortgage amount and, therefore, he may be permitted to deposit the amount. The trial court allowed the petitioner to deposit the amount in the Court and issued notice to the mortgagee in possession. The defendant/non-petitioner submitted that the mortgage consideration was Rs.30,000/- and not Rs.3,000/-. It is also submitted that the petitioner also sent a money order of Rs.3,000/- which was not accepted by the non-petitioner because the mortgage consideration was Rs.30,000/-.

The trial court on the ground that the plaintiff deposited the amount with the condition and that deposit is subject to the decision of above referred second appeal. That conditional amount was not accepted by the trial court to be valid deposit. Therefore, the trial court dismissed the petitioner's application under Section 83.

Learned counsel for the petitioner vehemently submitted that it is a fact that the plaintiff filed suit for eviction of defendant as the defendant is his tenant. The suit was dismissed by the trial court and the first appellate court, therefore, the petitioner preferred second appeal which is pending and,

therefore, the petitioner could have deposited the amount under Section 83 of the Transfer of Property Act only subject to decision of second appeal as that was the earlier litigation. In view of the above, the trial court committed serious error of law.

I considered the submissions of learned counsel for the petitioner and perused the order passed by the trial court.

It appears from Section 83 of the Transfer of Property Act that that provision only gives an opportunity to the mortgagor to deposit of due amount in Court and in case, the mortgagee accepts the amount, then the court may pass appropriate order without asking the parties to file regular suit for redemption in a case where there is no dispute about the mortgage amount and the mortgagee is not disputing the rights of the mortgagor. This enabling provision is not substitute for a regular suit for redemption of mortgaged property. Section 87 clearly provides that the Court can pass an order only when the mortgagee is ready to accept the amount offered by the mortgagor and not otherwise. The plaintiff's right even after dismissal of the application under Section 83 of the Transfer of Property Act remained intact and, therefore, after dismissal of the application of the

mortgagor, the remedy available is to file suit for redemption of property wherein the dispute can be sorted out about actual mortgage consideration.

In view of the above, I do not find any illegality in the impugned order. No ground is made out for interference of this Court under Section 115 CPC in such matter.

Accordingly, this revision petition, having no merits, is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya